Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1998

WILLIAM PIERCE,

PETITIONER,

VS.

CONNIE MANSFIELD,

RESPONDENT.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Steven Kropelnicki, jr.
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43 pp

QUESTION PRESENTED

In an action to set aside an allegedly fraudulent conveyance, may Dr. Pierce be deprived of his property to satisfy a default judgment Mrs. Mansfield obtained in a prior action against a corporation with which Dr. Pierce had no dealings, where neither he nor the corporation with which he dealt had any notice of the prior action nor any opportunity to defend the claim on which this case is based?

TABLE OF CONTENTS

Question Presented... i

Table of Contents..... ii

Table of Cases and Authorities..... iii

Opinions Below 1

Basis for Jurisdiction 2

Constitutional Provisions and Statutes..... 2

Statement of the Case 3

Argument..... 8

The petition should be granted because the court of appeals has ignored decisions of this court which hold that a litigant is not bound by a judgment entered in an action in which he was not a party and was given no notice nor opportunity to be heard; Dr. Pierce has been denied due process of law because the court below took his property to satisfy a judgment which he was not permitted to defend.

Appendix..... ..... 1a

Opinion of the United States Court of Appeals for the Fourth Circuit entered 27 July 1998..... 1a

Judgment of the United States District Court for the Western District of North Carolina entered 31 May 1995.....15a

TABLE OF CASES AND AUTHORITIES

Cases: Page

Branch v. Dempsey, 265 N.C. 733, 145 S.E. 2d 395(1965).....11

Branch v. Town of Chapel Hill, 361 N.C. 1, 387 S.E. 2d 655, cert. denied 110 S.C. 2631, 111 L. Ed. 2d 651(1990),.....10

Dawson Bank v. Harris, 84 N.C. 206(1881).....10

Eason v. Spense, 232 N.C. 579, 61 S.E. 2d 717(1950) 13

Hansberry v. Lee, 311 U.S. 32, (1940).....16

Griffin v. McBrayer, 252 N.C. 54, 112 S.E. 2d 748(1960).....11

National Mortg. Corp. v. American Title Ins. Co., 299 N.C. 369, 261 S.E. 2d 844(1980).....10

Nytco Leasing, Inc. vs. Southeastern Motels, Inc.,

40 N.C. App. 120, 252 S.E. 2nd 826(1979).....10

Parker v. Stewart, 29 N.C. App. 747, 225 S.E. 2d 632 (1976).....13

Pinnix v. Griffin, 221 N.C. 348, 20 S.E. 2d 366 (1942).....12

Scott v. Jordan, 235 N.C. 244, 69 S.E. 2d 557 (1952).....13

Shepherd v. Shepherd, 273 N.C. 71, 159 S.E.2d 357 (1968).....13

Smoky Mountain Enterprises, Inc. v. Rose, 283 N.C. 373, 196 S.E. 2d 189 (1973).....10

Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).....13

Thomas v. Reavis, 196 N.C. 254, 154 S.E. 226.....13

Thompson v. Laster, 246 N.C. 34, 97 S.E. 2d 492 (1957).....11, 12

Zenith Radio Corp. v. Hazeltine Research, Inc., et al., 395 U.S. 100(1969).....14, 15

Constitutional Provisions:

North Carolina Constitution, Article I, §19.....2, 13

United States Constitution, Fifth & Fourteenth Amendments.....2

Statutes:

The North Carolina Fraudulent Conveyances Act, NCGS 39-25 10

Other Authorities:

37 C.J.S., *Fraudulent Conveyances*, Section 331 10

RESTATEMENT OF THE LAW, SECOND, *Judgments*, American Law Institute (1982) 10

PETITION FOR WRIT OF CERTIORARI

Petitioner, Dr. William Pierce, respectfully petitions this honorable court that it issue a writ of certiorari to review the opinion of the United States Court of Appeals for the Fourth Circuit in this cause.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in *Mansfield v. Pierce*, record number 96-1904, is unpublished. The judgment of the United States District Court for the Western District of North Carolina, CA-95-62-2, also is unpublished.

BASIS FOR JURISDICTION

This Petition for Writ of Certiorari seeks review of the opinion of the United States Court of Appeals for the Fourth Circuit which was entered 27 July 1998.

This court has jurisdiction to review that decision on Writ of Certiorari pursuant to the provisions of 28 U.S. Code §1254(1).

The provisions of Rule 29.4(b) and (c) are not applicable.

CONSTITUTIONAL PROVISIONS INVOLVED

"No person shall. . . be deprived of life, liberty, or property, without due process of law. . . . "

United States Constitution, Fifth Amendment

". . . [N]or shall any state deprive any person of life, liberty, or property, without due process of law. . . ."

United States Constitution, Fourteenth Amendment

"No person shall be. . .disseized of his freehold . . .or in any manner deprived of his life, liberty, or property, but by the law of the land."

Constitution of North Carolina, Art. I, Sec. 19

STATEMENT OF THE CASE

Connie Mansfield, a citizen of Oklahoma, sued William Pierce, a citizen of West Virginia, in the United States District Court for the Western District of North Carolina; the amount in controversy exceeds $75,000, exclusive of interest and costs. The District Court had original jurisdiction under the provisions of 28 U.S. Code §1332.

The complaint alleges that Dr. Pierce participated in a fraudulent conveyance when he purchased real estate in Macon County, North Carolina, from a corporation which owes her a million dollars for the wrongful death of her son, Harold Mansfield. Dr. Pierce raised a number of defenses in his answer, among them the fact that he bought the real estate in question from a North Carolina corporation, Church of the Creator, Inc. While Mrs Mansfield had obtained a default judgment in a Florida court against a separate Florida corporation which used the same name as Dr. Pierce's transferor, she never sued the North Carolina corporation. It owes her no money.

The case was tried to a jury at the 13 May 1996 session of the district court. The court denied Dr. Pierce's motions for judgment in his favor as a matter of law. It submitted to the jury the issue of whether the North Carolina corporation with which Dr. Pierce dealt was "essentially the same entity " as the Florida corporation which Mrs. Mansfield

had sued in Florida.[1] The effect of this ruling was to bind Dr. Pierce to a judgment entered in a case in which neither he nor any entity with which he dealt had any notice or opportunity to be heard.

The court entered judgment for Mrs. Mansfield based upon the jury's verdict, and from that judgment Dr. Pierce appealed to the United States Court of Appeals for the Fourth Circuit.

In an unpublished, *per curiam* opinion, the Court of Appeals affirmed.

This case arose when plaintiff's son, Harold Mansfield, a black man, engaged in an altercation with George Loeb, a white man, in a shopping center parking lot in Florida in May of 1991. After the men exchanged obscenities, Mr. Mansfield assaulted Loeb with a brick, and Loeb shot and killed Mansfield.

Loeb was convicted of murder in a Florida court in July of 1992 and is serving a life sentence.

Loeb was a member of an unincorporated entity called "The Church of the Creator", a group which preached a religion of white supremacy and called for a racial holy war against non-whites. He had nothing to do with either of the corporations.

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1. The court also asked the jury to decide: "Did the Church of the Creator fraudulently convey the property in question to the defendant. . . ?" This ignored the fact that the church, an unincorporated entity, never owned nor conveyed the property Dr. Pierce bought from the North Carolina corporation. The trial court was guilty of greater sins; the jury answered this issue for plaintiff.

Although Mrs. Mansfield contends that the murder of Mr. Mansfield was ". . . racially motivated and carried out in furtherance of. . . [the church's]. . . goal of eliminating non-whites and 'purifying' the white race. . . ", there is no evidence anywhere in the record to support that allegation and it has never been proved in any tribunal.

The Church of the Creator was established sometime in the early 1970's by Ben Klassen, who was its "Pontifex Maximus" until he resigned that position in February of 1993.

Klassen helped found two separate corporations, one chartered in Florida in 1971 and the other in North Carolina in 1981. In each case Klassen was an initial incorporator and an initial director. He served as president and as a director of the Florida corporation through February of 1993 when he turned that entity over to Rick McCarty. Apparently, Klassen was president and one of the directors of the North Carolina corporation when he committed suicide in August of 1993. McCarty had nothing to do with the North Carolina corporation.

Mrs. Mansfield offered no evidence of how these corporations were managed, what business either of them actually transacted, or how either conducted its affairs. It is clear that they existed as separate corporations, with no common board of directors, no parent/subsidiary relationship, and no other formal connection between them.

We know that the North Carolina corporation owned real estate in Macon County, North Carolina, which it acquired in two tracts in 1992 and in 1994. The Florida corporation had no interest in this property at any time.

In March of 1994, seven months after Ben Klassen killed himself and a few weeks after the Florida corporation was voluntarily dissolved, Mrs. Mansfield filed suit against the Florida corporation, seeking damages for the wrongful death of her son. She alleged that in killing her son Loeb was acting acting as an agent of "the Church" and in the furtherance of its business. She never served process in accordance with Florida law, and she made no attempt to serve process on anyone except Rick McCarty, late president of the Florida corporation. Even though in her complaint in that action she alleged the ". . .fraudulent conveyance of the North Carolina real estate to Dr. Pierce. . .", she did not give any notice of her suit to either of the parties to that transaction.

She obtained a one million dollar judgment against the Florida corporation by default.

In February of 1995 she brought this action against Dr. Pierce, alleging that she had a judgment against an entity she called "The Church of the Creator. . .a corporation devoted to white supremacy. . . ." She alleged that Dr. Pierce participated in a fraudulent conveyance from that entity when he bought the Macon County real estate, and asked the court to set aside that conveyance. Her complaint makes no distinction between the two corporations.

The complaint alleged Dr. Pierce is ". . . the head of the National Alliance, a white supremacist organization." Dr. Pierce does head that organization. He is the author of *The Turner Diaries*, a book condemned in some circles as an incitement to white takeover of America. However, Dr. Pierce never had anything to do with the Church of the

Creator or with either corporation, save for the purchase of land from the North Carolina corporation.

In a press release issued when he filed the lawsuit, Mrs. Mansfield's attorney, Morris Dees of the Southern Poverty Law Center, bragged that he has bankrupted other white supremicist organizations through litigation and threatened in this action to "shut down" Dr. Pierce and the National Alliance.

Mrs. Mansfield never brought any action in any forum against the North Carolina corporation, either to establish that it had anything to do with the death of her son, or to establish its liability for the debts of the Florida corporation. She never filed any pleading asking the court to adjudicate these issues.

Dr. Pierce challenged Ms. Mansfield's standing to attack his purchase of the property as a fraudulent conveyance until she has established in some court that the entity with which he dealt owes her money. Dr. Pierce objected not only on the grounds of the substantive North Carolina law of fraudulent conveyances, but also on the grounds that as a fundamental principle of due process the Florida default judgment against the Florida corporation can have no binding effect on the North Carolina corporation, on Dr. Pierce, or on anyone else who is not a party to the Florida proceeding.

Dr. Pierce raised these objections specifically in his answer, in a motion to join the North Carolina corporation as a necessary party, a motion for judgment on the pleadings, a motion for summary judgment, numerous objections during the trial, and motions for judgment as a matter of law.

At trial Mrs. Mansfield offered no evidence of any legal basis on which to hold either the North Carolina corporation, Dr. Pierce, or his property responsible for the death of Harold Mansfield. The trial court apparently realized when she rested her case that Mrs. Mansfield would need some help bridging the gap between her default judgment against a Florida corporation and the sale of North Carolina real estate by a North Carolina corporation. Ignoring the lack of any pleading requesting an adjudication of the issue, the court asked the jury to decide whether the two corporations were "essentially the same entity", a legal concept heretofore unknown in North Carolina corporate law.

Dr. Pierce argued both in the trial court and later in the court of appeals that the Florida judgment can be given no binding effect against the North Carolina corporation or against him. This is true even if there were any evidence that the two corporations were alter egos.

The court of appeals ignored the substantive law of fraudulent conveyances, the substantive law governing who is bound by a judgment, and the decisions of this court defining the due process considerations which protect a litigant from the results of proceedings in which he did not participate. Dr. Pierce seeks nothing more than the protection of the rules enunciated in those decisions.

ARGUMENT

The petition should be granted because the Court of Appeals has ignored decisions of this court which hold that a litigant is not bound by a judgment entered in an action in which he was not a party and was given no notice or opportunity to be heard; Dr. Pierce has been denied due

process of law because the court below took his property to satisfy a judgment which he was not permitted to defend.

Mrs. Mansfield's claims against Dr. Pierce are based exclusively upon the default judgment she obtained in the civil action against the Florida corporation. Disregarding a number of serious problems with that judgment, we may assume for present purposes that it is conclusive against the Florida corporation: with regard to that corporation, it has been established that the Florida corporation owes her damages for the wrongful death of her son.

The question is whether that adjudication is binding upon or can be given any effect with regard to Dr. Pierce or the North Carolina corporation with which he dealt, where neither of those entities had notice of the Florida lawsuit, neither was a party to those proceedings, and neither had any opportunity to litigate the basis of his liability in that lawsuit.

The Florida judgment does not bind the North Carolina corporation or Dr. Pierce. As a matter of substantive law it binds only the Florida corporation, and it does not confer on Mrs. Pierce any standing to challenge the real estate transaction in question or to deprive Dr. Pierce of the property he acquired in that transaction. Moreover, to give the Florida judgment any conclusive effect in this case is to deny Dr. Pierce due process of law.

THE SUBSTANTIVE LAW

This is a diversity action involving the conveyance of North Carolina real estate, and North Carolina law provides the rules of decision. The court of appeals disregarded two propositions which are clearly established in North Carolina.

First, under the North Carolina Fraudulent Conveyances Act, NCGS 39-25[2] , it is a prerequisite to recovery that a plaintiff plead and prove that she is a creditor of the transferor, and the debt must be proved in an action in which the transferor is a party—it is not permissible to sue only Dr. Pierce and attempt to prove in that action that his transferor owes her money; see *Dawson Bank v. Harris*, 84 N.C. 206 (1881), and *Nytco Leasing, Inc. v. Southeastern Motels, Inc.*, 252 S.E. 2nd 826, 40 N.C. App 120 (1979).

The law in other jurisdictions is in accord; see 37 C.J.S., *Fraudulent Conveyances*, Section 331.

The default judgment against the Florida corporation is not a substitute for a judgment against the North Carolina corporation; a judgment is conclusive only as to the parties who participated in the action and as to the issues adjudicated in it. Neither the doctrine of *res judicata* nor any doctrine of estoppel applies where there in no identity of parties, subject matter, and issue. *Branch v. Town of Chapel Hill*, 361 N.C. 1, 387 S.E. 2d 655, cert. denied 110 S.C. 2631, 111 L. Ed. 2d 651(1990); *National Mortg. Corp. v. American Title Ins. Co.*, 299 N.C. 369, 261 S.E. 2d 844(1980); *Smoky Mountain Enterprises, Inc. v. Rose*, 283 N.C. 373, 196 S.E. 2d 189(1973).

RESTATEMENT OF THE LAW, SECOND, *Judgments*, American Law Institute (1982), provides that even where a corporation is the alter ego of another entity, a judgment against that corporation establishes the liability of the other entity only if the other entity is given notice that

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2.While this action was pending North Carolina adopted the Uniform Fraudulent Conveyances Act, NCGS 39-23.1 *et seq*. This case is governed by the prior law which is a codification of 13 Eliz., c.5 s.2.

such liability is sought to be imposed and a fair opportunity to defend the action resulting in the judgment; Section 59(5). The comment to that section points out that regardless of the rules and principles which determine whether corporate liability may be imposed upon other entities,

> ...the consequence under the rules governing judgments is that a judgment nominally against the corporation creates a binding obligation upon those who have acted in corporate dress. The judgment is thus binding only on those individuals associated with the corporation who personally, or through some representative, had adequate opportunity to participate in the litigation leading to the judgment.

The general proposition is illustrated by cases in which plaintiff seeks to hold a principal liable under the doctrine of respondeat superior for the wrongdoing of an agent.

An injured party may sue either the agent or the principal, and if a judgment is obtained against either agent or principal and not satisfied, the injured party may bring a separate action against the agent or principal who was not party to the first suit; *Griffin v. McBrayer*, 252 N.C. 54, 112 S.E. 2d 748(1960). However, when a plaintiff recovers judgment against the agent that judgment is not *res judicata* on the issue of the agent's negligence in an subsequent action to hold the principal liable for that agent's negligence; *Branch v. Dempsey*, 265 N.C. 733, 145 S.E. 2d 395(1965). Likewise, the judgment against the agent does not estop a principal who is not a party to the prior lawsuit and did not participate in the defense of the action; *Thompson v. Laster*,

246 N.C. 34, 97 S.E. 2d 492(1957). See also *Pinnix v. Griffin*, 221 N.C. 348, 20 S.E. 2d 366(1942).

It necessarily follows that had the North Carolina corporation retained the real estate it sold Dr. Pierce, Mrs. Mansfield could not reach that property to satisfy her judgment against the Florida corporation. The North Carolina corporation would be entitled to defend the wrongful death action, even if it admitted it is the alter ego of the Florida corporation.

If the conveyance is set aside title reverts to the North Carolina corporation, as if there had been no sale to Dr. Pierce. Even if she could prove the conveyance fraudulent, then, Mrs. Mansfield has no judgment which can be enforced against the property, and therefore no standing to attack the conveyance.

The court of appeals completely ignored this substantive law. Neither the court of appeals nor respondent has suggested any authority for the proposition that the judgment against the Florida corporation establishes the liability of the North Carolina corporation for the wrongful death of Harold Mansfield. There is no authority for the proposition that Mrs. Mansfield has standing to attack a conveyance from the North Carolina corporation, in the absence of an adjudication of the underlying liability question which is binding on that corporation.

THE DUE PROCESS ISSUE

Were this merely a matter in which the lower courts ignored clearly-established substantive law, the case might not merit review by the United States Supreme Court.

However, the correct application of that substantive law is mandated by the requirements of due process of law.

The North Carolina Supreme Court stated in *Scott v. Jordan*, 235 N.C. 244, 69 S.E. 2d 557, 561 (1952), that:

> Under Article I, Section 17 [now Section 19, the "law of the land" clause] of the North Carolina Constitution, a judgment cannot bind a person unless he comes or is brought before the court in some way sanctioned by law and afforded an opportunity to be heard in defense of his rights. *Eason v. Spense*, 232 N.C. 579, 61 S.E. 2d 717; *Thomas v. Reavis*, 196 N.C. 254, 154 S.E. 226.

The constitutional protection of North Carolina's "law of the land" clause is essentially the same as that provided by the federal due process clause: both require that before a citizen may be deprived of his property he be given notice and the opportunity to be heard before a competent tribunal. *Parker v. Stewart*, 29 N.C. App. 747, 225 S.E. 2d 632 (1976). See also *Shepherd v. Shepherd*, 273 N.C. 71, 159 S.E. 2d 357 (1968).

The Constitution, of course, protects a citizen against governmental deprivation of property rights, but when a court enforces a private claim to the property of another, the Constitution compels that court to afford defendant due process of law; see, e.g. *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969).

All of these principles are established beyond any dispute by this court in *Zenith Radio Corp. v. Hazeltine Research, Inc., et al.*, 395 U.S. 100 (1969). That case arose

when Hazeltine Research, Inc., (HRI) brought a patent infringement suit against Zenith. Zenith counterclaimed alleging, *inter alia*, an unlawful conspiracy among HRI, its parent corporation, Hazeltine Corp. (Hazeltine) and others.

HRI and Zenith stipulated before trial that HRI and Hazeltine were to be considered as one entity for purposes of the litigation. Hazeltine was not served with the counterclaim nor named as a party in the action and it made no appearance until Zenith proposed that the judgment awarded to it on its counterclaim be entered against Hazeltine as well as HRI.

The trial court relied on the "one entity" stipulation and entered judgment against Hazeltine as well as HRI. The court of appeals set aside the judgment against Hazeltine, finding that the trial court lacked jurisdiction over that company despite the stipulation.

On this point this court affirmed the court of appeals, stating that:

> It is elementary that one is not bound by a judgment *in personam* resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process. . . . The consistent constitutional rule has been that a court has no power to adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant.

395 U.S. 110, citations omitted.

Even had Zenith proved at the trial that HRI and Hazeltine were alter egos, "...absent jurisdiction over Hazeltine, that determination would bind only HRI." *Id.* at 111.

The Court of Appeals attempted to distinguish Zenith:

> Mansfield sought to prove that the North Carolina corporation and the Florida corporation were alter egos in order to establish the fact of the North Carolina corporation's indebtedness to her, a necessary element of a suit to set aside a fraudulent conveyance. Mansfield, however, has not sought an *in personam* judgment against the North Carolina corporation. . . .

Opinion, p.11

That is precisely the point. It has never been established in any action to which the North Carolina corporation is a party either that it has any liability to Ms. Mansfield or that it is the alter ego of the Florida corporation.

As discussed above, if the conveyance to Dr. Pierce is set aside, title reverts to the North Carolina corporation, which is not bound by any adjudication that the Florida corporation is liable for the death of Mrs. Mansfield's son, or that it has any obligation for any debts of the Florida corporation. The North Carolina corporation never had any opportunity to litigate either of those issues. Mrs. Mansfield cannot enforce a Florida judgment against the property of the North Carolina corporation consistent with due process of law . It would be absurd to hold that Mrs. Mansfield has

greater rights against property in the hands of Dr. Pierce than she would have against the same property in the hands of the North Carolina corporation.

The Court of Appeals held that Dr. Pierce had an opportunity to litigate the issue of alter ego liability. The record actually makes mockery of that contention. The alter ego claim is not pleaded, and Dr. Pierce had no notice that he would be required at trial to prove that one corporation was not "essentially the same entity" as the other. This misses the point, even so. Neither Dr. Pierce nor any entity with which he dealt has had an opportunity to litigate the issue which is the *sine que non* in any case to recover damages for the wrongful death of Harold Mansfield—is anyone other than Loeb responsible for killing Harold Mansfield?

Zenith stands for the proposition that despite all of this litigation, there is no adjudication of that underlying issue which binds Dr. Pierce.

Something much more important is at stake than merely failing to observe technical legal rules. Dr. Pierce has been deprived of his property to satisfy an alleged debt which Mrs. Mansfield has not been required to prove nor Dr. Pierce permitted to deny.

As this court stated in *Hansberry v. Lee*, 311 U.S. 32, 40-41 (1940):

> It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a

> party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and the statute of the United States prescribe, . . . and judicial action enforcing it against the person or property of the absent party is not the due process which the Fifth and Fourteenth Amendments requires. . . . [Citations omitted.]

This is a particularly appropriate case in which to limit the effect of the Florida judgment to the defendant named in that suit. Mrs. Mansfield waited until the founder of the church killed himself, his successor spent all the money and dissolved the Florida corporation, before suing that corporation. Not even the defendant in that case, much less Dr. Pierce, was able to defend it. One must wonder whether Mrs. Mansfield's Southern Poverty Law Center attorneys would have filed the lawsuit if they expected anyone to make them prove the things they alleged in the complaint.

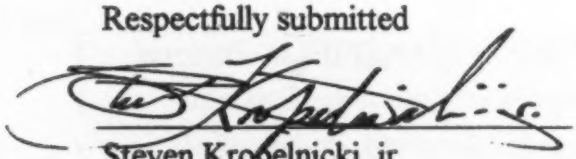
Moreover, the courts should be particularly mindful of due process considerations where, as here, lawyers announce on filling suit that one of their motives is to silence the advocacy of views they oppose. It is impossible to review this record and not wonder: "Would our courts allow such things to happen if Dr. Pierce advocated homosexual rights, abortion rights, or some other positions currently favored in our courts?"

The federal courts should not be available, not even to Morris Dees, as an instrument for a private program of censorship.

Dr. Pierce was tried for his beliefs about race and politics, and for his authorship of *The Turner Diaries;* there has been no trial to determine whether Mrs. Mansfield is entitled to recover damages for the death of her son.

Until Dr. Pierce is permitted to protect his interests in that trial he has not been afforded due process of law.

Respectfully submitted



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APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ENTERED 27 JULY 1998

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

CONNIE MANSFIELD, Personal Representative of the Estate of Harold Mansfield, on behalf of herself and the Estate, Plaintiff-Appellee,	)	No. 96-1904
v.	)	
WILLIAM PIERCE, Defendant-Appellant.	)	

Appeal from the United States District Court for the Western District of North Carolina, at Bryson City. Lacy H. Thornburg, District Judge. (CA-95-62-2)

Argued: January 26, 1998

Decided: July 27, 1998

Before MURNAGHAN, NIEMEYER, and MOTZ, Circuit

Judges.

Affirmed by unpublished *per curiam* opinion.

COUNSEL

ARGUED: Steven Kropelnicki, Jr., CARTER & KROPELNICKI, P.A., Asheville, North Carolina, for Appellant. Jack Richard Cohen, SOUTHERN POVERTY LAW CENTER, Montgomery, Alabama, for Appellee. ON BRIEF: Morris S. Dees, Jr., Marcia Bull Stadeker, SOUTHERN POVERTY LAW CENTER, Montgomery, Alabama; C. Frank Goldsmith, GOLDSMITH, GOLDSMITH & DEWS, P.A., Marion, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

The Church of the Creator ("Church" or "COTC"), a religious organization dedicated to the advancement and expansion of the white race, has conducted activities at various times through three entities: an unincorporated association, a North Carolina corporation ("COTC-NC"), and a Florida corporation ("COTC-FL"). Connie Mansfield obtained a civil default judgment of $1 million against COTC-FL in 1994 after a COTC adherent murdered her son.

Mansfield subsequently filed suit in federal court against Dr. William Pierce, alleging that Pierce had been the grantee of a fraudulent conveyance from COTC-NC. Mansfield sought to impose a constructive trust on profits realized by Pierce from his sale of the property. A jury delivered a verdict in Mansfield's favor, having concluded that COTC-NC was the alter ego of COTC-FL, and that there had been a fraudulent

conveyance of the property from COTC-NC to Pierce. Pierce's renewed motion for judgment as a matter of law was denied, and the district court entered judgment on the verdict. We affirm.

The district court had jurisdiction under 28 U.S.C. §1332. We have jurisdiction under 28 U.S.C. §1291. Pierce filed a timely notice of appeal in accordance with F.R.A.P. 4(a).

I

The present controversy originated in May 1991, when George Loeb murdered Connie Mansfield's son, Harold, in Jacksonville, Florida. Loeb, who was convicted of the murder in July 1992, was a member of the unincorporated COTC. Founded and led by Ben Klassen, the COTC urged white persons to become adherents of "Creativity," described as a "White Racial Religion." The self-proclaimed purpose of the COTC was "the survival, expansion, and advancement of the White Race." COTC members believed that a racial holy war, or "RAHOWA," was necessary to further their cause.

In 1973, Klassen incorporated COTC-FL. Klassen lived in Florida at that time. Eight years later, Klassen moved from Florida to North Carolina and filed articles of incorporation for COTC-NC. Between 1981 and 1992, COTC-FL ceased actively to operate. Although COTC-FL remained legally in existence, Klassen conducted all COTC activities from his property in North Carolina until he transferred control of the Church to Rick McCarty in 1992.

Two weeks before Loeb's conviction on murder charges in Florida state court, in July 1992, COTC-NC conveyed the property at issue in the instant case to Dr. Pierce for

$100,000. Pierce, the chairman of the National Alliance, a white supremacist organization, sold the property in January 1994 for $200,000. The parties stipulated before trial that Pierce's profit on the sale was $85,000.

After the transfer of the COTC-NC property to Pierce, Klassen sent the sale proceeds and the COTC's inventory of books to Mark Wilson in Milwaukee, Wisconsin, whom Klassen had chosen to succeed him as "Pontifex Maximus" of the Church. Klassen soon became dissatisfied with Wilson, however, and revoked his appointment in favor of McCarty, a Florida resident. Approximately $50,000, the amount of proceeds remaining from the sale to Pierce, and the majority of the books were transferred to the COTC's new headquarters in Florida.

Klassen committed suicide in August 1993. Although COTC-NC continued legally to exist, there is no record of any activity by COTC-NC after McCarty succeeded Klassen as the head of the Church. McCarty filed articles of dissolution for COTC-FL on February 22, 1994.

On March 7, 1994, Connie Mansfield filed a complaint in Florida state court against COTC-FL, alleging that COTC-FL had engaged in a pattern of racketeering activity that included the murder of her son. See Fl. Stat. Ann. §§772.103 & 772.104. Mansfield served process on McCarty as the president of COTC-FL in April 1994. After COTC-FL failed to respond to the complaint or otherwise to appear, Mansfield moved for the entry of default. A default was entered on April 25, 1994, and the court entered judgment for Mansfield in the amount of $1 million on May 2, 1994.

Mansfield filed suit against Pierce on February 27, 1995, in the United States District court for the Western District of

North Carolina. Mansfield alleged that COTC-NC was the alter ego of COTC-FL, and claimed that the sale of the COTC-NC property to Pierce constituted a fraudulent conveyance under North Carolina law.* The district court denied Pierce's motion to join COTC-NC as a defendant. Motions by Pierce for judgment on the pleadings and for summary judgment were also denied.

At trial, Mansfield sought to prove that Klassen had sold the property to Pierce to protect it from a potential civil judgment arising out of the Loeb murder case. Among other evidence, Mansfield produced Klassen's memoirs, in which Klassen expressd concern about civil liability and discussed the sale of the property to Pierce "at a price far below its real value. . .the bargain price of $100,000." There was evidence that Pierce knew of Klassen's reasons for selling the property at a price below fair market value.

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*Although Mansfield did not obtain a judgment against COTC-FL until approximately two years after the date of the conveyance to Pierce, a tort claimant is deemed to be a creditor of the tortfeasor from the date of the wrong for the purpose of setting aside a fraudulent conveyance. See Lewis v. Blackman, 448 S.E.2d 133, 135(N.C. Ct. App. 1994)(holding that a tort claimant was entitled to the protection of N.C. Gen. Stat. §39-15 even though the conveyances were made before the tort victim had filed suit); see also, e.g., Baker v. Geist, 321 A.2d 634, 635-37 (Pa. 1974) (holding that a tort claimant was a creditor when conveyances were made, even though the tort victim had yet to file suit); Money v. Powell, 139 So. 2d 702, 703 (Fla. Dist. Ct. App. 1962) (holding that "contingent creditors and tort claimants are as fully protected against fraudulent transfers as holders of absolute claims."); Hansen v. Cramer, 245 P.2d 1059, 1060 (Cal. 1952) (en banc) (stating "[i]t is well settled in this state that the relationship of debtor and creditor arises in tort cases the moment the cause of action accrues.").

The jury returned a special verdict finding that COTC-NC and COTC-FL were "essentially the same entity." And that the conveyance of property by COTC-NC to Pierce was fraudulent. Pierce's motion for judgment as a matter of law was denied, and the district court entered judgment on the verdict on May 31, 1996.

II

On appeal, Pierce presents several arguments to support his contention that the district court erred in denying his renewed motion for judgment as a matter of law. Pierce first argues that the evidence adduced by Mansfield was insufficient as a matter of law to prove that COTC-NC was the alter ego of COTC-FL. Next, Pierce maintains that Mansfield failed to prove she was a creditor of COTC-NC. Pierce contends that Mansfield may not use the Florida judgment to establish the fact of COTC-FL's indebtedness to Mansfield because Pierce was not made a party to the Florida proceeding. Pierce also claims that the Florida judgment was rendered invalid by defective service of process. Finally, Pierce argues that even if Mansfield was a creditor of COTC-FL, that COTC-NC must be afforded an opportunity to litigate the alter ego question and the underlying issue of indebtedness. COTC-NC was not made a party to either the Florida suit or the instant litigation.

We review de novo the district court's denial of judgment as a matter of law. Reinhold v. Virginia, 135 F.3d 920, 929 (4th Cir. 1998); Benesh v. Amphenol Corp. (In re Wildewood Litig.), 52 F.3d 499, 502 (4th Cir. 1995). As to any facts found by the jury, however, our review is circumscribed. Price v. City of Charlotte, 93 F.3d 1241, 1249 (4th Cir. 1996), cert. Denied, 117 S. Ct. 1246 (1997). The question is

whether the evidence, viewed in the light most favorable to Mansfield, was sufficient to permit a reasonable jury to return a verdict in her favor. Reinhold, 135 F.2d at 929; Andrade v. Mayfair Management, Inc., 88 F.3d 258, 261 (4th Cir. 1996). We have noted that an appellant bears a "hefty burden" in establishing that the evidence is insufficient to support a jury verdict, Price, 93 F.3d at 1249; nevertheless "we are not a rubber stamp convened merely to endorse the conclusions of the jury, but rather have a duty to reverse the jury verdict[ ] if the evidence cannot support it." *Id.* At 1250 (citing Singer v. Dugan, 45 F.3d 823, 829 (4th Cir. 1995)).

A

We first consider whether Mansfield presented evidence sufficient to permit a reasonable jury to conclude that COTC-NC was the alter ego of COTC-FL. We find that the verdict is supported by the evidence.

North Carolina law permits a court to "disregard the corporate form. . .and extend liability for corporate obligations beyond the confines of a corporation's separate entity, whenever necessary to prevent fraud or achieve equity." Glenn v. Wagner, 329 S.E.2d 326, 330-31 (N.C. 1985); see Atlantic Tobacco Co. v. Honeycutt, 398 S.E.2d 641, 643 (N.C. Ct. App. 1990). In the context of affiliated corporations dominated by a common shareholder, the North Carolina Supreme Court has held that the inquiry is whether the two corporations were "so created, controlled, dominated, and used" by the controlling shareholder as to make one corporation the "mere alter ego" of the other. Waff Bros., Inc. v. Bank of N.C., 221 S.E.2d 273, 281 (N.C 1976); see B-W Acceptance Corp. v. Spencer, 149 S.E.2d

570, 576 (N.C. 1966) (implying that the "corporate structure" would be disregarded if the parent corporation dominated both subsidiaries so that neither subsidiary had a "separate mind, will, or existence"). "If so, the two corporations must be regarded, for the purposes of this litigation, as one and the same person." Waff Bros., 221 S.E.2d at 281.

The "instrumentality rule" applied by the North Carolina courts in determining whether to pierce the corporate veil consists of three elements: "(1) the domination and control of the corporate entity; (2) the use of that domination and control to perpetrate a fraud or wrong; [and] (3) the proximate causation of the wrong complained of by the domination or control." Atlantic Tobacco Co., 398 S.E.2d at 643; see Glenn, 329 S.E.2d at 330. Four factors are of primary importance in deciding whether to disregard the separate corporate entity under the instrumentality rule: "(1) inadequate capitalization; (2) noncompliance with corporate formalities; (3) complete domination and control of the corporation so that it has no independent identity; and (4) excessive fragmentation of a single enterprise into separate corporations." Atlantic Tobacco Co., 398 S.E.2d at 643; Glenn, 329 S.E.2d at 330-31. The North Carolina Supreme Court has emphasized, however, that "[i]t is not the presence or absence of any particular factor, that is determinative. Rather, it is a combination of factors which, when taken together with an element of injustice or abuse of corporate privilege, suggest that the corporate entity attacked had no separate mind, will, or existence of its own." Glenn, 329 S.E.2d at 332 (internal quotation marks omitted); see Atlantic Tobacco Co., 398 S.E.2d at 643.

The evidence at trial showed that both COTC-FL and COTC-NC were founded by Klassen and were financed, during his

lifetime, with Klassen's personal funds. There was substantial evidence that Klassen exercised unilateral control over the corporations, although other individuals were named as directors in various corporate filings. The transaction challenged here, the sale of the COTC-NC property to Pierce, was not authorized by the COTC-NC board of directors, but evidently was undertaken by Klassen without consultation. Similarly, the record fails to show that anyone other than Klassen participated in the decisions to transfer the sale proceeds and the COTC's library of books to Wilson and later, to McCarty. And although the articles of incorporation for COTC-FL provided for the election of directors by COTC-FL members, and for the election of officers by the directors, the evidence indicated that Klassen simply appointed McCarty to the positions of director, President, Secretary, and Treasurer.

There was considerable other evidence of noncompliance with corporate formalities. COTC-FL was administratively dissolved four times between 1973 and 1993 for failure to file an annual report. See Fl. Stat. Ann. §617.1622. Although Florida law prescribes a minimum of three directors, see Fl. Stat. Ann. §617.0803, COTC-FL's annual reports between 1980 and 1990 identify Klassen as the sole directors. COTC-FL's 1993 application for reinstatement lists McCarty, Klassen, and Janet Quaise [sic], as officers and directors. Quaife testified, however, that she had not agreed to be a director of COTC-FL, and in fact, had no knowledge that her name had been used on the application for reinstatement. There was no evidence that any director had ever been elected by the COTC-FL members in accordance with the articles of incorporation. McCarty testified that he had never met anyone who purported to be an officer, director, or member of COTC-FL, other than Klassen, and never attended a board meeting or saw a list of members.

The articles of dissolution for COTC-FL filed by McCarty in 1994 stated that the number of directors was one, again in contravention of Florida law. Furthermore, the articles indicated that COTC-FL had no members, notwithstanding the provision in the articles of incorporation for a minimum of three members.

The only corporate documents on file with the North Carolina Secretary of State as of May 16, 1995, with respect to COTC-NC were the articles of incorporation, filed on December 14, 1981, and a notice of resignation from the initial registered agent, Clayman Dean Conner, filed on May 21, 1982. COTC-NC has not designated a registered agent since Conner's resignation. See N.C. Gen Stat. §55-5-01 (stating that "[e]each corporation must continuously maintain in this State: . . .a registered agent"). Although North Carolina law has required, since 1990, that an annual report be filed with the Secretary of State, see N.C. Gen. Stat. §55-16-22, COTC-NC has never filed such a report.

We conclude that the record contained ample evidence to sustain the jury's finding that COTC-NC and COTC-FL were alter egos of Klassen and of each other, Klassen had complete control of both corporations until he transferred command to McCarty, Klassen exercised his control over COTC-NC to cause the sale of the real estate to Pierce at a price well below fair market value, thereby draining the corporation of funds available to satisfy any civil judgment arising out of the murder of Harold Mansfield. Because the evidence supports the jury verdict that COTC-NC and COTC-FL were alter egos, "the two corporations must be regarded, for purposes of this litigation, as one and the same person." Waff Bros., 221 S.E.2d at 281.

B

Next, Pierce argues that the judgment against COTC-FL cannot be used to establish the fact of COTC-FL's indebtedness to Mansfield in the instant litigation. Pierce claims that he must be given an opportunity to relitigate the issues underlying the default judgment because he was not made a party to the Florida proceeding.

Although it appears the question has not been addressed by the North Carolina courts, the general rule has been stated as follows:

> A judgment which has been obtained by a defrauded creditor is, as against the transferee of the property, conclusive as to the fact of indebtedness on which it is based, provided that the judgment has been rendered by a court of competent jurisdiction, and that there is nothing to show fraud or collusion....

37 Am.Jur.2d Fraudulent Conveyances § 178. See, e.g., Commerce Bank of Lebanon v. Halladale A Corp., 618 S.W. 2d 288, 290 (Mo. Ct. App. 1981) (holding that judgment against debtor-transferor was conclusive as to the fact of indebtedness in a suit against transferees to set aside conveyances); Chapline v. North Am. Acceptance Corp., 544 P.2d 682, 685 (Ariz. Ct. App. 1976) (same); see also Giove v. Stanko, 977 F.2d 413, 418 (8th Cir. 1992) (holding that transferees of fraudulent conveyances had no due process right to attack directly a judgment against the debtor-transferor because none of their own property was at risk; the action was against the debtor-transferor's property, not the property of the transferees). Because Pierce has failed to allege that the Florida judgment was obtained through fraud

or collusion, we conclude that Mansfield's status as a creditor of COTC-FL was conclusively established by the $1 million default judgment against COTC-FL.

C

Pierce next challenges the validity of the Florida default judgment, arguing that service of process on the dissolved COTC-FL was defective. Under Florida law, process against a dissolved corporation is to be served on "one or more of the directors of the dissolved corporation as trustees thereof." Fl. Stat. Ann. § 48.101. In the instant case, the return of service indicated that process was served on "Church of the Creator Inc. (c/o President, Richard McCarty)." Pierce contends that service was ineffective because the summons was not directed to McCarty as a trustee of the dissolved corporation, but to COTC-FL and McCarty in his capacity as president of COTC-FL.

We find no merit to Pierce's argument. Pierce does not dispute that McCarty was a proper person to receive service under § 48.101. The erroneous identification of the capacity in which Pierce was served is nothing more than a "hypertechnical" defect which does not invalidate the service. See American Hosp. of Miami, Inc. v. Nateman, 498 So. 2d 444, 445-46 (Fla. Dist. Ct. App. 1986) (holding that a variance which "does not result in prejudice to a defendant does not serve to invalidate the service."); cf. Stoeffer v. Castagliola, 629 So. 2d 196 (Fla. Dist. Ct. App. 1993) (finding defective service where process against a dissolved corporation was served on the corporation's registered agent, who was not a director).

D

Finally, Pierce maintains that the judgment against COTC-FL cannot bind COTC-NC unless COTC-NC is afforded an opportunity to litigate the alter ego question and contest the issue of indebtedness. Pierce relies principally on Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100 (1969). In Zenith, the district court entered judgment against both the named defendant, Hazeltine Research, Inc. ("HRI"), and its parent company, Hazeltine Corporation ("Hazeltine"), based on a pretrial stipulation that Hazeltine and HRI were alter egos. Noting that Hazeltine had not been a party to the litigation, or to the stipulation, the Supreme Court held that the Court of Appeals had correctly vacated the judgment against Hazeltine, stating:

> It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process. The consistent constitutional rule has been that a court has no power to adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant.

Id. at 110.

Zenith is readily distinguishable from the instant case. Mansfield sought to prove that COTC-NC and COTC-FL were alter egos in order to establish the fact of COTC-NC's indebtedness to her, a necessary element of a suit to set aside a fraudulent conveyance. Mansfield, however, has not sought an in personam judgment against COTC-NC, an entity which both parties agree is, for all practical purposes, nonexistent. There is no question that the district court had personal

jurisdiction over Pierce, the party against whom judgment was entered. And unlike Hazeltine, Pierce has had a full and complete opportunity to litigate the alter ego question, and to defend against Mansfield's allegation that the conveyance from Klassen to Pierce was fraudulent.

III

In sum, we conclude that the evidence is sufficient to support the jury verdict that COTC-FL and COTC-NC were alter egos. Furthermore, we hold that the default judgment against COTC-FL was not rendered invalid by the technical defect in service of process, and that the district court properly permitted Mansfield to use that judgment to establish the fact of COTC-FL's indebtedness. Finally, we are not persuaded that the judgment is rendered infirm by COTC-NC's absence. Accordingly, the judgment of the district court is hereby

AFFIRMED.

APPENDIX B

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ENTERED 31 MAY 1995

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA BRYSON CITY DIVISION

CONNIE MANSFIELD, Personal	)	
Representative of the Estate of Harold	)	
Mansfield, on behalf of herself	)	
and the Estate,	)	Civil Action
Plaintiff,	)	No. 2:95CV62
v.	)	
WILLIAM PIERCE,	)	
Defendant.	)	

JUDGMENT AND STAY OF EXECUTION

This action came for trial before the undersigned U.S. District Judge and a jury during the Court's May trial term. The trial commenced on May 13 and ended on May 15, 1996. The Court submitted two issues to the jury, both of which were decided in favor of the plaintiff. The issues were:

1. Were the North Carolina Church of the Creator and the Florida Church of the Creator essentially the same entity?

   YES: _____ NO: _____

2. Did the Church of the Creator fraudulently

> convey the property in question to the Defendant, and was any such fraudulent conveyance a proximate cause of the loss complained of by the Plaintiff?
>
> YES: _____ NO: _____

The jury answered "Yes" to both questions.

Prior to the trial, the parties had stipulated to the following:

> For purposes of this action only and only for the purpose of the Court's effectuating a remedy should the plaintiff prevail, the parties stipulate that the defendant's profit on his sale of the Church of the Creator property was $85,000. The parties further stipulate that should the plaintiff prevail at trial, the Court should impose a constructive trust for $85,000 for the plaintiff's benefit on the deed of trust on the Church property under which the defendant and his wife are beneficiaries.

The undisputed evidence at trial revealed that defendant purchased the Church of the Creator (COTC) property for $100,000 on July 17, 1992. The evidence further revealed that the defendant sold the property to Mildred Cope on January 12, 1994 for a purchase price of $200,000. At the closing, Ms. Cope paid $100,000 in cash and signed a promissory note for $100,000. The note is secured by a deed of trust.

Although the defendant was the sole buyer of the property under the July 17, 1992 deed from the COTC, both the defendant and his wife, Susan Pierce, signed the January

12, 1994 deed conveying the property to Ms. Cope. Ms. Pierce's name was also included as a payee with the defendant on the promissory note from Ms. Cope and as a beneficiary with the defendant under the deed of trust. Bobby Key, the lawyer who prepared the deeds, testified that Ms. Pierce's name was added to the deed solely to effectuate a waiver of any potential marital interest she may have had in the property. Under North Carolina law, a spouse may dissent from a deceased spouse's will under certain limited circumstances. N.C. Gen. Stat. §30-1. Instead of taking an intestate share, a dissenting spouse has the option of taking a life estate in one-third of the value of all real property that the deceased spouse owned "at any time during coverture" unless, among other things, the dissenting spouse waived her right by joining in a conveyance of the property or was not required to join in the conveyance. N.C. Gen. Stat. 29-30.

Upon the jury's verdict in favor of the plaintiff and the parties' stipulation, it is ORDERED AND ADJUDGED that:

1. the defendant was unjustly enriched in the amount of $85,000 from his purchase and sale of the COTC property;

2. in order for the plaintiff to recover the defendant's unjust enrichment, a constructive trust for $85,000 is imposed for the plaintiff's benefit on the promissory note from Ms. Cope and on the deed of trust on the COTC property under which the defendant and his wife are beneficiaries; and

3. to effectuate the constructive trust and to provide for a stay of execution pending appeal, it is FURTHER ORDERED that:

a. within 15 days of the entry of this judgment, the defendant shall endorse the promissory note over to

the plaintiff and deliver it to the Clerk of Court. If the defendant's wife Susan Pierce, does not also endorse the promissory note over to the plaintiff, the Court will conduct further proceedings to effectuate its judgment;

b. the Clerk of Court is directed to serve the attached summons and order upon Mildred Cope. The summons and order require Ms. Cope to serve an answer upon the parties' attorneys and the Clerk of Court within 20 days after the summons is served upon her. In her answer, Ms. Cope must show cause, if any, why she should not be required to make future payments under the promissory note to the Clerk of Court, rather than to the defendant. Her answer must also indicate whether any payments are past due and whether she has made any payments in advance of her current monthly schedule. If Ms. Cope cannot show cause why she should not be required to make future payments to the Clerk of Court, she is ordered to deposit with the Clerk of Court any future payments she makes under the note. Payments made by Ms. Cope to the Clerk shall have the same force and effect as payments made to the holders of the note. The Clerk of Court is directed to deposit any payments received from Ms. Cope into an interest bearing account; and

c. pending any appeal, the Clerk shall retain the promissory note and any payments made by Ms. Cope as security for satisfaction of the judgment. If the judgment in favor of the plaintiff is upheld, the Clerk shall deliver the note and any payments from Ms. Cope to the plaintiff, and the plaintiff shall pay the defendant the amount by which the principal balance of the promissory note, at the date of the entry of this order, exceeds $85,000. If the defendant prevails on appeal, the Clerk shall retain the note and payments from Ms. Cope pending further order of the Court;

4. the defendant is ordered to turn over to the Clerk any payments on the note he receives from Ms. Cope after the date of the entry of this order;

5. except as provided by order of the Court, further execution on the judgment is stayed pending appeal; and

6. costs other than attorney's fees shall be taxable to the defendant.

ORDERED AND ADJUDGED this 29th day of May, 1996.

/S/_____
Hon. Lacy Thornburg
U.S. District Judge